



U.S. Department of Justice

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Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

July 3, 2008

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: Mark Filip 
Deputy Attorney General

SUBJECT: District of Columbia v. Heller

On June 26, 2008, the Supreme Court issued its decision in *District of Columbia v. Heller*. Consistent with the Attorney General's 2001 guidance and the position of the United States in the *Heller* case, the Court held that the Second Amendment's "right * * * to keep and bear Arms" protects an individual right to possess and use a firearm for lawful purposes, such as self-defense within the home, that is unconnected to service in the militia. In so doing, the Court held unconstitutional a local District of Columbia ban on handgun possession in the home and a related provision requiring that firearms in the home be kept inoperable at all times. The Court did not address the law's licensing requirement and stated that it assumed that the plaintiff would be issued a license.

In its opinion, the Court also made clear that "the right secured by the Second Amendment is not unlimited" and does not confer a "right to keep and carry any weapon whatsoever in any manner and for whatever purpose." For example, the Court noted that prohibitions on the carrying of concealed weapons had long been considered lawful under the Second Amendment or state analogs. While not elaborating on the full scope of the Second Amendment, the Court also stated that "nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." In enumerating "these presumptively lawful regulatory measures," the Court noted that its list was meant to be merely illustrative and "not * * * exhaustive." The Court likewise stated that the Second Amendment "does not protect those weapons not typically possessed by law-abiding citizens for lawful purpose."

The Court also held that a complete ban on the possession of functional firearms in the home "would fail constitutional muster" under any of the standards of scrutiny generally applied to enumerated constitutional rights. However, the Court did not establish an explicit standard for reviewing Second Amendment claims.

The Department will continue to defend vigorously the constitutionality of existing federal firearms laws. The Department has an important obligation both to enforce federal law and to protect and respect the constitutional rights of all Americans. Given the diversity of the Department's work, we expect that *Heller* will be raised in a variety of cases and contexts – from civil and criminal litigation to regulatory matters. It is important that the Department develop and communicate a consistent position in response to *Heller*-related claims.

Accordingly, United States Attorney's Offices should promptly advise Ms. Patty Stemler of the Criminal Division and Alexander Haas of the Civil Division whenever Second Amendment issues are raised in litigation or administrative matters. Ms. Stemler and Mr. Haas will coordinate briefing and other official responses with appropriate Department offices.